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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,188	07/28/2003	George J. Fechko JR.	5000.302	6095

21176 7590 10/17/2006

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EXAMINER

SONG, MATTHEW J

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 10/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/628,188	Applicant(s) FECHKO ET AL.	
	Examiner Matthew J. Song	Art Unit 1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6,7,9-13,15-22,24,25,27-31 and 33-38 is/are pending in the application.
- 4a) Of the above claim(s) 9,10,19,20,30 and 31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-8,11-13,15-18,21,22,24,25,27-29 and 33-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/2/2006 has been entered.

Withdrawn Rejections

2. Applicant's arguments, see page 11 of the remarks, filed 6/30/2006, with respect to the rejection in view of Carter (US 2001/0019132 A1) and Otani et al (JP 08-208380) have been fully considered and are persuasive. The rejection of claims 1-4, 6-7, 11-13, 15-18, 21-22, 24-25, 27-29 and 33-38 has been withdrawn. The prior art does not teach an ambient gas consisting of hydrogen.

Claim Objections

3. Claim 19 is objected to because of the following informalities: Claim 19 is listed as original claim, however Claim 19 is directed to a product claim, which was previously withdrawn, note the Non-final rejection filed on 10/18/2005. Appropriate correction is required.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

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improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-4, 6-7, 11-13, 15-18, 21-22, 24-25, 27-29, and 33-38 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-42 of copending Application No. 10/628,189 ('189). Although the conflicting claims are not identical, they are not patentably distinct from each other because producing a silicon carbide crystal sublimation comprising an ambient gas of hydrogen, heating a silicon carbide source powder to sublimation, maintaining the silicon carbide source powder at a temperature of between 2000°C and 2500°C and maintaining the seed crystal at a temperature that is between 50-350°C lower than the temperature of the source powder, continuing to heat the silicon carbide source powder until a desired amount of silicon carbide crystal growth while reducing the amount of nitrogen incorporated (Claim 1 and 7). '189 claims introducing an ambient gas containing hydrogen. '189 does not claim an ambient gas consisting of hydrogen. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify '189 by

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using an ambient consisting of hydrogen because '189 clearly suggests that hydrogen is the only required gas, thus the use of only hydrogen would have been obvious.

Referring to claims 2-4, 6-7, 11-13, 15-18, 21-22, 24-25, 27-29, '189 claims all of limitations of these claims in claims 4-6, 9, 10, 28, 32-35, 37-38.

Referring to claim 33-38, '189 claims a hydrocarbon (claim 11).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Song whose telephone number is 571-272-1468. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Matthew J Song
Examiner
Art Unit 1722

MJS
October 11, 2006


SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1722